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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,643	04/10/2001	Isaiah Moore JR.	IM-1	7659

7590
Michael I. Kroll
171 Stillwell Lane
Syosset, NY 11791

09/20/2002

EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 09/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

Office Action Summary

Application No.

09/829,643

Applicant(s)

MOORE, ISAIAH

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 . 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: on page 13, line 1, "bunter" should be ~~bunter~~; on page 38, line 1, "to" should be deleted after "batter".

Appropriate correction is required for the above objections.

2. Claim 4 is objected to because of the following informalities: in claim 4, line 1, "a" should be deleted before "thinner"; in claim 16, line 5, it is unclear from "enable the batter to improve" what the batter is supposed to improve; in claim 19, line 1, "A" should be inserted before "Substitute". Appropriate correction is required for the above objections.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 recites the limitation "a unit; the throwing motion; and the arm" in lines 3, 9 and 10 respectively. There is insufficient antecedent basis for this limitation in the claim. When referring to "a unit" is this a different unit than "a spherical unit"?

6. Claim 16 recites the limitation "the batter" in line 3. There is insufficient antecedent basis for this limitation in the claim.

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7. Claim 19 recites the limitation "a unit" in line 3. There is insufficient antecedent basis for this limitation in the claim. When referring to "a unit" is this a different unit than "a spherical unit"?

8. Claim 21 recites the limitation "the ball; a unit; the game" in lines 2, 3, and 9 respectively. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 22 recites the limitation "the bat" in line 1. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 23 recites the limitation "a unit" in line 3. There is insufficient antecedent basis for this limitation in the claim. When referring to "a unit" is this a different unit than "a spherical unit"?

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-5, 15, 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Randall (3,099,450).

Randall discloses a baseball batting practice apparatus and method, comprising: selecting a spherical unit (A) from which a segment (B) has been removed to leave a unit comprised of an exterior spherical portion (1) and a flat area (2), the removed segment being sized such that a perpendicular line from the center of the flat area to the opposite side of the remaining spherical

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portion is equal to or between forty-five and fifty-five percent (see column 1, lines 36-40 and lines 63-66) of the original spherical unit diameter; gripping the unit in a manner to enable one of several standard pitches; initiating the throwing motion; moving the arm in a manner to enable the chosen standard pitch (see column 1, lines 51-62); and releasing the unit at a time and in a manner to enable the chosen pitch and to direct the unit to a target area in proximity to a human batter (column 2, lines 23-26), to enable the human batter to attempt to identify standard pitches and hit the unit with a bat and thereby improve the human batter's batting skills.

Regarding claim 2, Randall shows the removed segment is one-half of the original spherical unit (see column 1, lines 36-39).

Regarding claim 3, Randall shows the bat is a typical baseball bat (see column 2, lines 23-24).

Regarding claims 4 and 5, Randall further shows the bat is a thinner than a typical baseball bat and has substantially constant diameter, the diameter being smaller than a typical baseball bat in the designated hitting portion of the typical baseball bat (see column 2, lines 24-26).

Regarding claim 15, Randall shows the unit is constructed from rubber (see column 1, lines 41-44).

Regarding claim 19, Randall discloses a substitute game apparatus for playing baseball, comprising a modified ball (A), the ball comprising a spherical unit from which a segment (B) has been removed to leave the unit comprised of an exterior spherical portion (1) and a flat area (2), the removed segment being sized such that a perpendicular line from the center of the flat area to the opposite side of the remaining spherical portion is equal to or between forty-five and

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fifty-five percent of the original spherical unit diameter (see column 1, lines 36-40 and lines 63-66).

Regarding claim 20, Randall shows a modified bat, the bat having a substantially constant diameter, the diameter being smaller than a typical baseball bat in the designated hitting portion of the typical baseball bat (see column 2, lines 23-26).

Regarding claim 21, Randall discloses an apparatus and method for playing baseball comprising: substituting for the ball a modified ball (A), the modified ball comprising a spherical unit from which a segment (B) has been removed to leave a unit comprised of an exterior spherical portion (1) and a flat area (2), the removed segment being sized such that a perpendicular line from the center of the flat area to the opposite side of the remaining spherical portion is equal to or between forty-five and fifty-five percent of the original spherical unit diameter, and playing the game using the modified ball (see column 1, lines 36-40 and lines 63-66).

Regarding claim 22, Randall further shows a modified bat, the modified bat having a constant diameter and playing the game using the modified bat (see column 2, lines 23-26).

Regarding claim 23, Randal discloses a modified ball for a game in which a player attempts to strike the ball with a hitting device, the ball comprising a spherical unit (A) from which a segment (B) has been removed to leave a unit comprised of an exterior spherical portion (1) and a flat area (2), the removed segment being sized such that a perpendicular line from the center of the flat area to the opposite side of the remaining spherical portion is equal to or between forty-five and fifty-five percent of the original spherical unit diameter (see column 1, lines 36-40 and lines 63-66).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (3,099,450) in view of Official Notice.

Regarding claims 6-14, Randall as disclosed above teaches that the modified ball can be held and pitched in a variety of ways in order to achieve a number of different pitching techniques. Randall does not specifically name the various types of pitches, but describes the various types of arm movements and the different ways for holding and propelling the modified ball (see column 1, lines 51-62). There are many different types of pitches and they are considered to be old and conventional, and it would have been obvious in view of the Official Notice to pitch the ball in a variety of pitches in order to make the game more interesting and increasingly more difficult.

15. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (3,099,450) in view of Gibbs et al (1,484,390).

Randall as disclosed above does not expressly indicate if the various types of pitches along with the arm movement and the different ways of holding and propelling the modified ball are provided in an instructional manual or chart. To provide instructional graphs, charts, tables, manuals, booklets, etc. is old and conventional and specifically described by Gibbs et al (see

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figures 1-6). It would have been obvious in view of Gibbs et al to have provided an instructional table for the training apparatus of Randall, so that the instructions are readily available for the players to achieve the desired pitch each time.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kempf; McGinley; Kidd; Strassburger; Ku; Gackenbach; Sexton et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703 308 3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on 703 308 2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 7768 for regular communications and 703 305 3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1148.



Paul T. Sewell
Supervisory Patent Examiner
Group 3700

MA
September 16, 2002